

1 U.S. DEPARTMENT OF THE INTERIOR
2 U.S. FISH AND WILDLIFE SERVICE
3 PUBLIC HEARING
4 regarding
5 A PROPOSAL TO
6 DESIGNATE CRITICAL HABITAT
7 FOR THE THREATENED
8 ALAMEDA WHIPSNAKE
9 SAN RAMON MARRIOTT
10 2600 Bishop Drive, Salon E
11 San Ramon, California
12 THURSDAY, JUNE 1, 2000
13 1:00 P.M.
14 PRESIDING: BENJAMIN C. BIBB, Chief
15 Congressional Affairs
16 U.S. Fish & Wildlife Service
17 Pacific Regional Office
18 911 N.E. 11th Avenue
19 Portland, Oregon 97232
20
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1 HEARING OFFICER BIBB: Please begin to take
2 your seats. We are now on the record. Good afternoon.
3 On behalf of the United States Fish and Wildlife
4 Service, I welcome you to this public hearing.
5 My name is Benjamin Bibb with the U.S. Fish &
6 Wildlife Service's Regional Office in Portland, Oregon.
7 I will be serving as the presiding official for this
8 hearing. Here also with me are the following
9 representatives from the U.S. Fish & Wildlife Service:
10 To my right, Cay Goude, assistant field supervisor of
11 the Sacramento Fish & Wildlife office. Pat Foulk, the
12 assistant field supervisor, also, of the Sacramento Fish
13 & Wildlife Service office. She is out, I believe, in the
14 back of the room.
15 There are other representatives of the U.S.
16 Fish & Wildlife Service here at today's hearing. You
17 will also find an information table just outside this
18 hearing with written and display materials about this
19 proposal, as well as Fish & Wildlife Service staff to
20 assist you and answer your questions.
21 At this point I would like to introduce Cay
22 Goude, who will make a statement about the Fish &
23 Wildlife Service proposal to designate critical habitat
24 for the threatened Alameda whipsnake.
25 MS. GOUDE: Thank you. I'm the Assistant

1 Field Supervisor for both the Endangered Species and the
2 Environmental Contaminants program within the services
3 of Sacramento Fish & Wildlife office. Our office's
4 jurisdiction includes all the counties within the San
5 Francisco Bay Area, as well as those in the Central
6 Valley.

7 I am here today with other Service
8 representatives to hear testimony on the proposal to
9 designate critical habitat for the Alameda whipsnake.
10 The proposed designation was published in the Federal
11 Register on March 8th, 2000, and copies are available at
12 the information table located in the back of this room.

13 It is our intent that any final action
14 resulting from this proposal be as accurate and
15 effective as possible, and towards that end we seek the
16 best scientific and commercial data available. We will
17 accept comments on the proposal until June 12, 2000, and
18 will base a final determination in part on testimony
19 received today as well as comments received by our
20 office.

21 Critical habitat for the Alameda whipsnake
22 includes areas that support plant communities such as
23 scrub and adjacent grasslands and oak woodlands. Within
24 these plant communities, specific features needed by
25 whipsnakes include small mammal burrows, rock outcrops,

1 talus, and other forms of cover to provide for
2 temperature regulation, shelter from predators, egg
3 laying sites, and areas for hibernation. Critical
4 habitat areas also need to be able to maintain the
5 whipsnake's various prey species and adequate insect
6 populations to sustain those prey species.

7 The Alameda whipsnake was listed as a
8 threatened species under the Endangered Species Act in
9 December of '97. At that time, the whipsnake was
10 afforded the protection of the Endangered Species Act,
11 which prohibits any individual from engaging in
12 unauthorized activities that will harm listed wildlife.

13 Critical habitat is defined in Section 3 of
14 the Endangered Species Act, includes the following: The
15 specific areas within the geographic area occupied by a
16 species at the time it is listed in accordance with the
17 Act, on which are found those physical or biological
18 features: One, essential to the conservation of the
19 species; and two, that may require special management
20 considerations or protection. "Conservation" means that
21 use of all methods and procedures that are necessary to
22 bring an endangered species or a threatened species to
23 the point at which listing under the Act is no longer
24 necessary.

25 The designation of critical habitat requires

1 federal agencies to consult with the Service on actions
2 that carry out, fund, or authorize that might destroy or
3 adversely modify critical habitat. A critical habitat
4 designation has no effect on actions where a federal
5 agency is not involved. For example, a landowner
6 undertaking a project on private land that involves no
7 federal funding or permit. The vast majority of human
8 activities that require a consultation with the Service
9 due to critical habitat proceed with little or no
10 modification.

11 Under the Endangered Species Act, a critical
12 habitat designation establishes a geographic area that
13 is important for the conservation of a threatened or
14 endangered species, and may require special management
15 considerations. However, a designation does not affect
16 landownership or establish a refuge, wilderness reserve,
17 preserve, or other special conservation areas. It does
18 not allow government or public access to private lands,
19 and will not result in closure of the area to all access
20 or use. Rather, it triggers the requirement that
21 federal agencies must consult with the Service on
22 activities they take or fund that might affect critical
23 habitat.

24 During the listing process for the whipsnake,
25 the Service determined that critical habitat designation

1 was not prudent for the species due to the lack of any
2 significant benefit beyond that covered by listing.
3 Moreover, the Service believed that publication of
4 precise maps and description of critical habitat in the
5 Federal Register would make this snake more vulnerable
6 to incidents of collection, further contributing to its
7 decline.

8 The Service concluded that any benefit which
9 may be derived from the designation of critical habitat
10 for the whipsnake was outweighed by the increased threat
11 of collection. However, in a lawsuit filed in federal
12 court against the Service by the Center for Biological
13 Diversity and Christians Caring for Creation, the
14 plaintiffs contended the Service was in violation of
15 Section 4 of the Endangered Species Act, which requires
16 the designation of critical habitat at the time the
17 species is listed.

18 In November of '99, the court dismissed the
19 lawsuit as a result of a settlement agreement entered
20 into by the Department of Interior and the plaintiffs.
21 Under the terms of the settlement, the Service agreed to
22 submit a proposal to designate critical habitat for
23 publication by March 1st, 2000, and to make a final
24 determination by September 1st, 2000. The Service
25 submitted its proposal to designate critical habitat for

1 the Alameda whipsnake to the Federal Register on
2 March 1st, and it was published on March 8th with a
3 60-day comment period.

4 In the March 8th Federal Register, the Service
5 proposed seven areas in Alameda, Contra Costa, Santa
6 Clara and San Joaquin Counties as critical habitat.
7 While there are 406,708 acres of critical habitat
8 proposed within these seven units, not all the land
9 within the units is significant enough to the whipsnake
10 to require federal agencies to consult with the Service.

11 The Service will require consultations only in
12 those areas that contain the physical and biological
13 features necessary for the species' survival. Existing
14 features and structures, such as various types of
15 development, building, roads, canals, railroads, large
16 water bodies, and other features not currently
17 containing or likely to develop these habitat components
18 are not considered critical habitat.

19 As Section 4 of the Act requires, the Service
20 will promptly hold at least one public hearing if any
21 person files a request within 45 days of the proposed
22 regulation. We received several requests from
23 individuals and organizations to hold this hearing. On
24 May 15th, we reopened the comment period for the
25 critical habitat designation until June 12th to

1 accommodate the hearing and to provide additional time
2 for your input.

3 It is our intent that any final action
4 resulting from this proposal will be as accurate and as
5 effective as possible. Therefore, we solicit comments
6 or suggestions from the public, other concerned
7 government agencies, the scientific community industry,
8 or any other interested party concerning this proposed
9 rule.

10 We particularly seek comments concerning the
11 following: The location of any additional populations
12 of Alameda whipsnake and the reasons why any habitat
13 should or should not be determined to be critical
14 habitat; additional information regarding the validity
15 of the primary constituent elements described in the
16 proposed rule; and three, additional information
17 regarding areas that may be essential as travel
18 corridors for connecting individual Alameda whipsnake
19 populations.

20 Any decision on the proposed action will take
21 into consideration the comments presented here or any
22 other relevant information received by the Service by
23 June 12th. Such communication may lead to final
24 regulation that differs from, or a withdrawal of, the
25 proposed designation of critical habitat for the

1 whipsnake.

2 The Endangered Species Act requires us to
3 designate critical habitat on the basis of the best
4 scientific and commercial information available, and to
5 consider the economic and other relevant impacts of
6 designating a particular area as critical habitat.

7 We may exclude areas from critical habitat
8 upon a determination that the benefits of such exclusion
9 outweigh the benefits of specifying such areas as
10 critical habitat. We cannot exclude such areas from
11 critical habitat when such exclusion would result in the
12 extinction of the species. We will conduct an analysis
13 of the economic impacts of designating these areas as
14 critical habitat prior to a final determination. When
15 completed, we will announce the availability of the
16 draft economic analysis with a notice in the Federal
17 Register. We will open a 30-day comment period at that
18 time.

19 I'd like now to introduce Jason Davis, a staff
20 biologist on our Endangered Species Division who will be
21 giving a short presentation on the Alameda whipsnake.

22 MR. DAVIS: Thanks, Cay. I'm Jason Davis,
23 Fish & Wildlife biologist with the U.S. Fish & Wildlife
24 Service. I am one of two primary biologists that wrote
25 the proposed rule to designate critical habitat for the

1 Alameda whipsnake. Heather Bell, who is standing in the
2 back was also involved, the second primary biologist,
3 that helped write the rule. She will be back there to
4 help answer any questions you may have. I'm going to
5 briefly describe the life history and biology of the
6 Alameda whipsnake for you this afternoon.

7 The Alameda whipsnake, scientific name
8 *Masticophis lateralis euryxanthus*, is a member of the
9 family Colubridae, which is a group of snakes that are
10 known for being extremely fast. It is a subspecies of
11 the California whipsnake, *Masticophis lateralis*.

12 The Alameda whipsnake is a slender snake that
13 measures from three to five feet in length. It has a
14 black dorsal surface with two yellow orange-ish lines
15 that run along its length. The underside of the Alameda
16 whipsnake is an orange-rufous color that in the bright
17 light has a striking iridescence. It's very beautiful,
18 actually.

19 The Alameda whipsnake occurs in very low
20 numbers. It's highly secretive. It's fairly unlikely
21 that you would actually see one even if you were
22 actively looking for one. There's another snake in the
23 Bay Area, the common garter snake, that may be confused
24 with the Alameda whipsnake as it is also black and has
25 usually orange, yellow or red stripes running down its

1 back.

2 The Alameda whipsnake is strongly associated
3 with scrub and chaparral habitats. Within scrub
4 habitats, whipsnakes tend to prefer south, southeast and
5 southwest facing slopes, as they tend to be more open
6 than north facing slopes. Whipsnakes prefer scrub
7 stands between 25 and 75 canopy coverage. As these
8 stands tend to provide for basking or sunbathing areas,
9 as well as allowing for cover against potential
10 predators, such as red-tailed hawks.

11 Whipsnakes can also be found in a number of
12 other natural habitats that lie adjacent to scrub
13 stands, including oak savannahs and grasslands. In
14 addition, riparian dry areas, or oak-bay woodlands that
15 lie in close adjacency to scrub habitats can be
16 considered Alameda whipsnake habitat. Rock outcrops are
17 an important component of Alameda whipsnake habitat, as
18 not only do they provide for potential breeding sites
19 and provide for cover for whipsnakes, they also tend to
20 attract large numbers of the whipsnake's primary prey,
21 which are fence lizards.

22 The Alameda whipsnake is an extremely fast
23 species, and it uses its speed quite effectively to
24 hunt down its primary prey which are lizards,
25 especially, western fence lizards, which is seen in this

1 guy's mouth here. Whipsnakes also will feed on skinks,
2 frogs, snakes, and small birds.

3 The Alameda whipsnake ranges throughout
4 northern -- ranges throughout northern coastal scrub and
5 chaparral habitats in Alameda and Contra Costa counties.
6 It is also known to occur in northern Santa Clara and
7 western San Joaquin counties if coastal scrub or
8 chaparral habitats occur there.

9 The Alameda whipsnake has been effectively
10 fragmented into five separate populations, and those are
11 the Tilden-Briones population, the Oakland Las Trampas
12 population, the Hayward-Pleasanton Ridge population, the
13 Mt. Diablo population, and the Sunol-Cedar Mountain
14 population.

15 If you were to look at a -- just an ordinary
16 road map of the East Bay area, you could probably figure
17 out where these five populations occur. They occur in
18 between the large urban centers and major highways that
19 kind of crisscross the East Bay area. This map shows
20 the seven critical habitat units that were proposed in
21 the recent rule to designate critical habitat.

22 The first five units seen up here also
23 correspond to the five populations that I just
24 mentioned, and those are: The Tilden-Briones population
25 occurs south of Highway 4. It occurs east of the city

1 of Richmond, west of Highway 680, and north of
2 Highway 24, which is not shown here.

3 The Oakland-Las Trampas population occurs east
4 of the city of Oakland, south of Highway 24, west of
5 Highway 680, and north of Highway 580.

6 The Hayward-Pleasanton Ridge population occurs
7 east of the city of Hayward, south of Highway 580, west
8 of Highway 680, and north of Highway 84 or Niles Canyon
9 Road, which is not shown here either.

10 The Mt. Diablo population is centered on
11 Mt. Diablo State Park, and it also occurs in scrub
12 habitats that radiate from the state park.

13 The fifth population is the Sunol-Cedar
14 Mountain population, which occurs east of Fremont and
15 Highway 680. It occurs south of 580 and the city of
16 Livermore. It also continues south into northern Santa
17 Clara County, and east into western San Joaquin County.

18 Also, a note, the two critical habitat units,
19 6 and 7, are quite important to the Alameda whipsnake,
20 as they provide for connectivity and allow -- they allow
21 whipsnakes to move back and forth to maintain I guess
22 genetic connectivity between four of the five whipsnake
23 populations.

24 The Alameda whipsnake is threatened by a
25 number of factors. The most important being habitat

1 destruction due to urban development and associated
2 construction of roads and highways. Urban development
3 tends to lead toward the -- lead to the attraction of
4 predators of the whipsnake, including non-native and
5 native mammalian species, including feral cats, also pet
6 cats and dogs, raccoons, skunks and opossums also prey
7 upon Alameda whipsnakes.

8 Overgrazing can be a problem for Alameda
9 whipsnakes, as they tend to avoid areas that provide
10 little to no cover, thus precluding movement or hunting
11 by whipsnakes into those areas. The conversion of scrub
12 and grasslands to recreational facilities, such as golf
13 courses is a threat to Alameda whipsnakes, as these
14 areas provide little in the way of cover and do not
15 provide any habitat for the whipsnake's primary prey,
16 being lizards.

17 Other threats to the Alameda whipsnake include
18 fire suppression that creates overgrown decadent stands
19 as scrub habitats. With the increasing encroachment of
20 urban development into adjacent wildlands, local fire
21 suppression agencies are finding it much more difficult
22 to allow normal fires to take place in these areas, thus
23 creating a situation where we have overgrown scrub
24 habitats that provide little in the way of access to
25 solar radiation. We have very dense and canopy closures

1 which are not attractive to Alameda whipsnakes. In
2 addition, overgrown decadent stands as scrub habitats
3 also contain high fuel loads which could place
4 individual populations at risk to a catastrophic
5 wildfire event, thus decimating the entire population.
6 So that concludes my presentation. I'll give the floor
7 back to Ben. I appreciate your attention today. I'll
8 be in the back of the room if you have any questions.

9 HEARING OFFICER BIBB: Thank you, Jason, and
10 thank you, Cay. This is a public hearing under
11 Section 4 of the Federal Endangered Species Act, as
12 amended. Notice of the public hearing was published in
13 the Federal Register on May 15, 2000, beginning on
14 page 30951.

15 To underline what Ms. Goude stated earlier,
16 public comments on this proposal will be accepted until
17 June 12th, 2000. After review and consideration of your
18 comments, and all other information gathered during this
19 comment period, the Service will make a final
20 determination on this proposal.

21 The purpose of this hearing is to receive your
22 comments on the proposal. Comments on all aspects of
23 the proposal are very important and will be carefully
24 considered. Because of the importance of your comments,
25 it is necessary that we follow certain procedures here

1 this afternoon.

2 If you want to present comments at this
3 hearing, please register at the table outside of the
4 room on one of these yellow cards. When you register,
5 indicate any organization that you are representing in
6 your comments today. When you are called to present
7 your comments, please come forward to the microphone in
8 the front beside the table here. Please begin your
9 presentation by stating your full name, spell it for the
10 record, indicate if you represent an organization.

11 This is an informal hearing. Therefore, you
12 will not be questioned or cross-examined in connection
13 with your comments. Your comments or questions are
14 recorded by the reporter, to my left, to preserve them
15 for the record. Please keep in mind, however, that the
16 reporter will not record any statements from the
17 audience nor statements which are made to the audience.
18 Comments must be made directly into the microphone
19 facing the front of the room.

20 Instead of presenting oral comments here today
21 or in addition to oral comments, you may submit comments
22 in writing. Written comments may be submitted to the
23 staff at the registration table or they may be mailed to
24 the following address: Field Supervisor, Sacramento
25 Fish & Wildlife Office, U.S. Fish & Wildlife Service,

1 2800 Cottage Way, Suite W-2605, Sacramento, California
2 95825.

3 This address is available at the registration
4 and information table just outside this room. Written
5 comments will be accepted, as I said, through
6 June 12, 2000. Written comments will be given the same
7 consideration as oral comments presented here.

8 At this point we are ready for our first
9 speaker, Mr. David Jameson, please come forward, state
10 your name, spell it for the record, identify who you
11 represent and begin your comments.

12 DAVID JAMESON: I am David Jameson. David,
13 J-a-m-e-s-o-n. I'm a senior research fellow at the
14 California Academy of Sciences, but I'm not here
15 representing the California Academy of Sciences. I'm
16 here as an individual citizen. I have 50 years of
17 biological research experience in the study of reptiles
18 and amphibians. I also in the last ten years have
19 served on regulatory commissions in Contra Costa County,
20 land use regulatory commissions in Contra Costa County.
21 I suspect that this represents a rather unique set of
22 qualifications.

23 The number of snakes in each area is small, as
24 is the overall population. In a changing environment,
25 the population has only three choices: move, evolve, or

1 become extinct. Your action must prevent the extinction
2 and promote the ability of the animals to move or become
3 extinct -- or evolve. Your action -- habitat
4 conservation plans which will develop from this proposal
5 must provide for the largest possible population to
6 assure the genetic variation for evolution, and these
7 plans must provide the opportunity for the snakes to
8 move to new habitat locations.

9 I ask the question: Is the proposed critical
10 habitat big enough? This winter at a National Academy
11 of Sciences colloquium, analyzing the future direction
12 of evolutionary processes, Dr. Alan Templeton of
13 Washington University pointed out that in the mountains
14 of Missouri, had been occupied by almost every habitat
15 known to exist in North America at one time or another
16 in the last 12,000 years, since the Glacial maximum.

17 The Bay Area has been subjected to the same
18 variation in the same period. This suggests that not
19 only must the proposed critical habitat be large enough
20 to provide for the recovery and the sustained
21 maintenance of the whipsnake in today's environment, but
22 must also account for changes which will come in the
23 future. Do you recognize this responsibility in your
24 report? I suspect that you have not reached far enough
25 to respond to future changes.

1 The whipsnake's population is so small that
2 incidental take permits appear impossible. Reinitiation
3 of consultation on previously approved permits will
4 surely be required.

5 One developer, giving you some of my
6 experiences now, proposed that areas 20 yards across
7 placed along a major road could be used as critical
8 habitat and as preservation areas for the whipsnake.
9 Even though the developers own herpetological consultant
10 had published reports that the home range of the Alameda
11 whipsnake was a minimum of several acres. We also
12 observe, of course, human behavior. People are known to
13 veer across traffic lanes in the face of oncoming
14 18-wheelers to run over a snake.

15 The development of habitat conservation plans
16 will be subject to some of the same manipulations.
17 Another developer has proposed to bulldoze several
18 hundred acres of a hillside, build houses on part of it
19 and declare that the remaining bulldozed area is
20 suitable for open space for the return of local species.
21 The returns on Mt. St. Helens after the recent eruption,
22 for example, are sporadic at best. I suggest that a
23 bulldozed hillside is not much better.

24 Developers in many communities are required to
25 set aside a portion of each new development as open

1 public space. It is not uncommon for developers to add
2 all the space between the sidewalk and the curb, sum it
3 up and add that as their proposed public open space.
4 That will hardly do for the whipsnake.

5 In each county in the state of California,
6 legislature and the Governor have given the local agency
7 formation commission the responsibility to preserve open
8 space. Often this requires that appropriate studies be
9 made. Over 40 years the legislature has appropriated
10 very few funds to make these studies. Your studies
11 will, however, serve for this purpose, and I assure you
12 as chair of the Contra Costa Local Agency Formation
13 Commission that these -- your studies will be used, and
14 I thank you for them. If the critical habitat is not
15 big enough, we will have done a disservice to future
16 generations. Thank you.

17 HEARING OFFICER BIBB: Mr. Jameson, thank you
18 very much.

19 We have quite a few speakers here today,
20 folks, so if you could summarize your statements, we
21 would appreciate it.

22 Our next speaker will be Christine Kaplan.
23 Ms. Kaplan, please come forward to the microphone, state
24 your name and spell it for the record, and indicate whom
25 you represent and begin your comments.

1 CHRISTINE KAPLAN: Christine Kaplan,
2 C-h-r-i-s-t-i-n-e, K-a-p-l-a-n. I live in Norris
3 Canyon. I own and manage a piece of the coastal
4 grassland range you folks are talking about. If this
5 designation goes through, how are you going to
6 compensate the landowners for the loss of the fair
7 market value and where will that funding come from? And
8 really, how would this designation of habitat actually
9 protect the whipsnake? Much of the land is owned by the
10 ranchers, and they're the ones that have already saved
11 the small population of whipsnake that's left. You
12 start designating the land, you're going to lose the
13 ranchers' cooperation.

14 Why not take a positive approach and instead
15 of penalizing the landowners for having wildlife
16 whipsnake on their property, why not reward them? Why
17 not cooperate with them so that they can continue to
18 manage for wildlife and the whipsnake rather than
19 penalize us for having wildlife on our property.

20 HEARING OFFICER BIBB: Ms. Kaplan, thank you
21 very much.

22 Our next speaker is Mike Conklin.
23 Mr. Conklin, please come forward to the microphone,
24 state your name and spell it for the record and indicate
25 who you represent and begin your comments.

1 MIKE CONKLIN: My name is Mike Conklin, and I
2 want to tell you if I could stop for a minute that I
3 take a little bit of offense at a governmental agency
4 telling me how I can address people and how I can speak.
5 So I'll spell for my name for you, O-s-c-a-r,
6 F-l-a-v-i-s.

7 I'm here to address this issue of critical
8 habitat for snakes, and any other animal within the
9 urban habitat zone that we call the Bay Area. I oppose
10 any increased legislation or ordinances that will
11 decrease the land use for human habitat within these
12 areas that puts any animal species above or before the
13 rights of our people.

14 I really think this is a classic case of
15 extremist environmentalism and government bureaucracy
16 joining at the hip to promote and vest their own
17 existence over the average citizen's realistic needs for
18 expanding housing opportunities within the Bay Area
19 urban zone.

20 I take exception to the environmentalist's
21 belief that ecology is described as a natural eco system
22 that is in a state of equilibrium, and disturbing one
23 element or species in this case disturbs the whole
24 system with a negative outcome or impact that will lead
25 to a collapse of what we term as quality of life.

1 The implication drawn by these people and
2 agencies is that a natural state of anything is the
3 preferred state, and thus it is best to leave everything
4 undisturbed. The theory is widely debated.

5 I think -- I find it really interesting where
6 these zones have been placed. We have a hundred million
7 acres in the state of California. We currently use
8 about four and a half million, I'll say five million for
9 urban and suburban growth. Yet, you've placed or
10 someone has placed these designations in an area that is
11 slated for growth. I think this is a fig leaf for
12 growth control. I think it's a fig leaf for population
13 control. I think we have plenty of governmental
14 agencies involved in land issues right now.

15 I don't know what -- I don't know about how
16 other people feel about this snake, but I'm going to
17 tell you how I feel about it. It's not in my food
18 chain. Never has been, never will be. I don't depend
19 on it for anything. If it disappeared tomorrow, it
20 wouldn't make any difference to me or the lives of my
21 children or their children. The same way it goes in
22 natural evolutionary process as the saber-toothed tiger.

23 So I think this thing is really bent, and I
24 think you need to really study this much longer than a
25 60-day extended comment period. Thank you.

1 HEARING OFFICER BIBB: Mr. Conklin, thanks
2 very much for your comments.
3 Our next speaker will be George Schneider.
4 Mr. Schneider, will you come forward and state your name
5 and spell it for the record, and indicate if you
6 represent anyone and begin your speech.
7 (No response.)
8 It doesn't seem that Mr. Schneider is here
9 presently, so we'll move to our next speaker. Next
10 speaker will be Bob Power.
11 Mr. Power, please come forward, state your
12 name, spell it for the record and indicate anybody you
13 represent and begin your comments.
14 BOB POWER: My name is Bob Power, P-o-w-e-r.
15 I represent the Bay Area Ridge Trail Council. The Bay
16 Area Ridge Trail Council has been working for
17 approximately 13 years to connect people, parklands,
18 open space and communities via multi-use trails.
19 We're friends of the environment. We're
20 concerned about habitat destruction and endangered
21 species and wish to work in collaboration with Fish &
22 Wildlife on these issues. We believe that access
23 creates good stewardship. Access to open space leads to
24 appreciation of open space, which leads to a willingness
25 on the part of the public to protect more open space.

1 We're very concerned that the proposed
2 determination would have a significant negative effect
3 on trail creation and trail use without good scientific
4 evidence to support it. We strongly disagree with
5 statements in the Federal Register Notice about the
6 adverse impacts of hiking, mountain biking, and
7 horseback riding on whipsnake habitat. These three use
8 types should be considered as non-consumptive uses as
9 described under Item 5 in the public comments solicited
10 section of the notice.

11 We can find no information in the notice nor
12 are we aware of any information that describes or
13 documents significant negative impacts of hikers,
14 mountain bikers, or horseback riders on whipsnakes or
15 their habitat. Continued public support for open space
16 in general and the Ridge Trail in particular is not
17 conceivable without appropriate public access.

18 We're concerned that the restrictions on
19 public usage and access described in the proposed
20 critical habitat designation will limit our long-term
21 potential to reach out, educate, and create long-term
22 stewardship in our parklands and open spaces on the part
23 of the general public.

24 At the point where any credible evidence has
25 presented negative impact by hikers, mountain bikers, or

1 horseback riders on whipsnakes or their habitat we will
2 be active and willing partners in developing public
3 educational outreach tools, and other effective measures
4 for protecting whipsnakes and their habitat.

5 We invite Fish & Wildlife staff to visit
6 current and proposed Ridge Trail segments, address our
7 board of directors, discuss strategies with staff of our
8 participating agency partners, and we would be happy to
9 coordinate any such meeting, and are open to suggestions
10 of any other method for developing positive
11 collaboration around the issues of access, stewardship
12 and protection. Thank you.

13 HEARING OFFICER BIBB: Thank you, Mr. Powers.

14 Our next speaker will be Norm Thomas.
15 Mr. Thomas, please come forward, state your name for the
16 record, spell it, indicate whom you represent, and
17 please begin making your comments.

18 NORMAN L. THOMAS: Norman L. Thomas,
19 T-h-o-m-a-s. I have several questions: What was the
20 whipsnake population in 1800? What was it in 1900? How
21 much did this study cost? This seems to me to be the
22 classic example of fanatic environmentalism.
23 Environmentalism, as far as I can tell, is junk science
24 promoted by green communists using the teachings of
25 Marx, Lennon and Hitler to abolish private property, and

1 rule the world.

2 HEARING OFFICER BIBB: Thank you, Mr. Thomas.

3 Our next speaker will be Clyde Vaughn.

4 Mr. Vaughn, if you could come forward, state
5 your name, spell it, indicate if you represent anyone
6 and begin your comments.

7 CLYDE VAUGHN: I'm Clyde Vaughn, That's
8 C-l-y-d-e. V as in Victor, a-u-g-h-n. I'm chairman of
9 the Moraga Del Rey Homeowners Association, one of the
10 largest homeowners associations in Orinda. I strongly
11 support the establishment of the proposed critical
12 habitat for the whipsnake and the prohibition of
13 activities in the habitat, which are adverse to the
14 whipsnake.

15 It is my understanding that the currently
16 undeveloped Gateway Valley in Orinda is part of the
17 proposed critical habitat of Unit 6; it most certainly
18 should be. The Gateway Valley is near our neighborhood.

19 The proposed Montanera Development in Gateway
20 Valley includes massive grading of several millions of
21 cubic yards of the valley, destroying much of the
22 vegetation. It also includes irrigation of an 18-hole
23 golf course and 225 housing units; the creation of the
24 18-hole golf course as well as tennis courts and trails
25 for hiking and bicycle riding and horseback riding are

1 also included in the proposed development.

2 These activities are obviously based on the
3 Federal Register likely to destroy or adversely modify
4 the prime whipsnake habitat now existing in Gateway
5 Valley. Gateway Valley is an essential corridor
6 connecting Units 1 and 2 of the critical habitat.

7 I most strongly urge U.S. Fish & Wildlife to
8 establish the proposed critical habitat including
9 Gateway Valley, and to prohibit all activities adverse
10 to the whipsnake in this critical habitat. Since the
11 development of Gateway Valley requires a Section 404
12 Clean Water Act permit from the U.S. Army Corps of
13 Engineers, I ask that Fish & Wildlife Service in
14 compliance with the Endangered Species Act prohibit the
15 Corps from issuing a 404 permit. Thank you very much.

16 HEARING OFFICER BIBB: Mr. Vaughn, thank you
17 very much for your speech -- for your comments.

18 The next person to speak will be Tom Brumleve.

19 Thank you, sir.

20 Mr. Brumleve, if you could come forward, state
21 your name, spell it for the record, indicate whom you
22 represent and begin your comments.

23 TOM BRUMLEVE: Yes. I'm Tom Brumleve,
24 B-r-u-m-l-e-v-e. I'm here to represent the Contra Costa
25 County Resource Conservation District. My principal

1 concern from the standpoint of the district is the
2 connection with federal funding and on private lands.

3 Now, the resource district has been working
4 for almost 60 years in this county, and our traditional
5 clients are the farmers and ranchers of Contra Costa
6 County. We've always prided ourselves in the fact that
7 we have absolutely no power. We don't enforce anything.
8 We are only effective by -- to the extent that we can
9 convince people that it makes good sense to do good
10 conservation on land, soil and water conservation, water
11 quality, resource protection. And all of this is
12 voluntary. We can never -- we take great pride in never
13 forcing anyone to do anything that they don't want to do
14 for their own benefit, or the benefit of the surrounding
15 resources.

16 Now I'm concerned about the connection
17 between, quote, "federal funding and this critical
18 habitat on private property." It's very unclear to me
19 how extensive that is or can become.

20 For example, does federal funding extend to
21 even technical assistance to a landowner for developing
22 a pond or reducing erosion, or does it -- is it
23 restricted to actual dollars received from the federal
24 government for some project? Is it -- does this funding
25 start only from the time the critical habitat is

1 established, or does it extend backwards to some funding
2 that a private landowner might have received in the
3 past? Is he already swept in if he received emergency
4 fee assistance, or something like that, five years ago
5 or 20 years ago? Do these kind of constraints run with
6 the owner, or do they run with the land? Is the present
7 owner of a piece of property going to be restricted
8 because the previous owner availed himself of some sort
9 of assistance that was seen in the public interest?

10 So those are my main concerns from the
11 standpoint of the District. There are some others that
12 I think others will probably touch on. I'm very
13 concerned that the maps are very general. They're not
14 very specific. You can't sometimes tell whether a
15 particular property is in or out. I think the criteria
16 is very general, very loose.

17 I never thought that grassland was considered
18 prime whipsnake habitat, but I hear this morning it
19 probably is. So, you know, where does it stop and how
20 do we know in advance whether we're in or out? So those
21 are my main concerns, and thank you for your attention.

22 HEARING OFFICER BIBB: Thank you,
23 Mr. Brumleve.

24 Our next speaker is Henry Alker. Mr. Alker,
25 if you could come forward, state your name, spell it for

1 the record, indicate who you represent and begin your
2 comments.

3 HENRY ALKER: Yes. My name is Henry,
4 H-e-n-r-y. Middle initial A, last name, Alker,
5 A-l-k-e-r. I represent the corporation known as
6 Southport Land and Commercial Company, who is a property
7 owner in the area proposed as critical habitat.

8 I'm one of the persons who requested we have a
9 public hearing for the purpose of answering questions,
10 some of those I've submitted in writing, along with my
11 request for the hearing. I'd like to present some more
12 questions here today. I hope to get the answers to
13 these questions before I file my comment on the
14 proposal, per se. I'm not a lawyer by training. Some
15 of the questions are legal questions, but I'm going to
16 ask them anyway.

17 It's my understanding that the benefit to a
18 species of critical habitat designation is restricted to
19 situations in which -- at least so far as private
20 actions by private property owners are concerned there
21 is a substantial federal nexus. I won't repeat any of
22 the questions that the previous speaker raised about
23 that topic, although I enthusiastically support your
24 answering those questions, as well as my own.

25 I would like to raise some other additional

1 questions about clarifying the meaning of the federal
2 nexus. As it was described in the comments made by that
3 lady, and as it's described in some of the written
4 announcements of this action, it talks about federal
5 funding or federal permits.

6 Let me give you some examples I'd like you to
7 clarify. I think this would do a lot for your public
8 relations, if you could make this clear. If I as a
9 private owner of private property that is in the land
10 you're proposing as critical habitat for the snake,
11 built a single house, would that in some conditions, in
12 no conditions, or in many conditions, constitute a
13 federal nexus, a substantial federal nexus?

14 More specifically, if I finance that house
15 with Fannie Mae mortgage, Freddie Mac mortgage, veterans
16 authority mortgage, or any other kind of mortgage
17 program that has been assisted at some time recently or
18 in the past by federal government, would that constitute
19 a substantial federal nexus that would mean that the --
20 would one have to consult with the Fish & Wildlife; or,
21 two, that the grounds would be present for the
22 application of restrictions that apply to public
23 property and federal property would also apply to my
24 private property?

25 Next question: If I build a commercial

1 building as a private property, not using private -- I
2 mean, using private financing on private land, does that
3 in some cases or all cases establish a federal nexus?
4 For example, if I build a restaurant on private property
5 in this land designated in their proposal as critical
6 habitat, I would like to know whether there is, in your
7 opinion, a federal nexus brought into play because
8 obviously restaurants are involved or could be involved
9 and frequently are involved in interstate commerce, and
10 the Constitution identifies the regulation interstate
11 commerce as an appropriate function for the federal
12 government.

13 I have read some of the legal history about
14 legal challenges to the Endangered Species Act, and I
15 have seen discussions made that the fact that you have a
16 small pond for two months on your land means you're
17 involved in interstate commerce because a duck can fly
18 over, stop in that pond, refresh itself, invigorate, and
19 fly on across the state line, get killed across the
20 state line, be sold to the grocery store back across the
21 other side of the state line. So there you are -- and
22 that's -- that argument is going to the Supreme Court,
23 so somebody thinks it's important. I'd like to know
24 what you people think.

25 Another specific example: Suppose I chose to

1 annex either my private house or maybe even my land
2 without a house on it, or my commercial building to the
3 Contra Costa Water District. This is a question I
4 discussed with Mr. Davis before, and he's been somewhat
5 encouraging, but I'd really like to see this put out in
6 a public place so I could have it objectively stated in
7 a way that I could cite in case somebody changes their
8 opinion later on.

9 When I connect to the Contra Costa water
10 system, I'm connecting with a -- with a water district,
11 at least on my part of this area -- where federal funds
12 were used at sometime in the past for construction.
13 I've discussed that case with Mr. Davis, but also with a
14 water restrictive that may be seeking at this very
15 moment additional funds, sometimes from federal sources.
16 So I need to know, because essentially then if that
17 provides a substantial federal nexus, then essentially
18 99 percent of all development that can't provide its own
19 water is involved in the federal nexus.

20 Now, I'll give you one more specific example:
21 Suppose there's a regional authority that overlaps with
22 the areas designated with your proposal that tries to
23 put in a habitat conservation plan. Some of the
24 previous speakers have mentioned that. It's a serious
25 pending proposal before Contra Costa supervisors and

1 proposed elsewhere in this area.

2 Now, under what conditions would the creation
3 of a habitat conservation plan be used as evidence or be
4 used as grounds to establish that there is a substantial
5 nexus? No conditions or some conditions or some
6 specific conditions? And very specifically, if federal
7 funds are being used and this is actively being proposed
8 -- I'm not making this up -- to help pay for getting the
9 habitat conservation plan organized, would that in turn
10 -- because federal funds were involved in financing that
11 whole enterprise, and it applies to all, you know,
12 hundreds of thousands of acres, would that mean there is
13 a federal nexus present, and therefore certain
14 additional responsibilities would be present that -- to
15 me is as a private owner of private land -- that might
16 not otherwise be in place?

17 Now, the second set of questions: Is it
18 prudent -- now "prudent" is a legal term that applies to
19 the adequacy of your designation and I'm using it in
20 that sense -- to designate private land as critical
21 habitat when there is no federal nexus for human
22 activities on that land? With no federal nexus, the
23 provisions of Section 7 of the Endangered Species Act do
24 not apply, so there would be no benefit to the
25 endangered species. Do you agree with this line of

1 argument? If not, why not?

2 Next question: A recovery plan for the
3 Alameda whipsnake may establish special management
4 practices for recovering that species. Critical habitat
5 designation by itself, as I understand it, does not
6 establish special management practices. Fish & Wildlife
7 organization that you represent was forced by litigation
8 to designate critical habitat before it has completed or
9 published its recovery plan.

10 I understand and appreciate your preference
11 absent litigation to work out the recovery plan, perhaps
12 before you designate critical habitat. It seems like a
13 reasonable way to proceed to me, but the question I wish
14 to ask you here: Would Fish & Wildlife be willing to
15 stipulate that no land, or at least no private land, or
16 no private land without a substantial federal nexus that
17 is not included in the recovery plan be included or
18 remain in the critical -- the designated critical
19 habitat land.

20 In other words, if you don't need my private
21 land for recovering this species, even though it's now
22 designated as critical habitat, I want to know why won't
23 you stipulate ahead of time that you just drop it out of
24 the critical habitat.

25 Next question: Does Fish & Wildlife agree

1 that this particular designation of critical habitat for
2 the Alameda whipsnake is required to comply with the
3 National Environmental Policy Act widely known as NEPA,
4 42, U.S. Code Section 1533, et seq., or et sequentia is
5 the Latin lawyers' talk? If so, will Fish & Wildlife
6 address impacts on land use activities that will be
7 required to be shifted elsewhere, and thus cause new
8 economic impacts and new environmental burdens, and if
9 those shifts or displacements have such impacts, which I
10 assume it would be pretty obvious that they would, how
11 would such impacts be mitigated, and more importantly by
12 whom?

13 Next question: Where is the comprehensive and
14 meaningful economic analysis of critical habitat
15 designation as required under 16, U.S. Code Section
16 1533(B)2? That may be what you referred to as the
17 future forthcoming economic study. I haven't been able
18 to see evidence of that study in the written material
19 made available concerning this designation. I do hope
20 there's some way I can find out if this study is coming
21 forth, it meets these criteria. I hope I don't have to
22 spend all day reading the Federal Register. I hope
23 there's some -- perhaps you could -- some other way of
24 notifying us other than the Federal Register if that
25 study -- when it becomes available and if it meets this

1 designation.

2 More specifically, in such an economic
3 analysis, these might be questions you can answer in the
4 future study if you can't answer them today: Does Fish
5 & Wildlife agree that prudent in the legal sense
6 applicable to this critical habitat designation will
7 necessarily impair or impede certain land uses that
8 otherwise would be allowable without that designation as
9 critical habitat? If so, what are such uses and what
10 are their economic consequences? If not, why not -- why
11 designate the land as critical habitat in the first
12 place?

13 On having guessed that maybe you're answering
14 that question with a future report, then why wasn't this
15 report done before or concurrently with your designating
16 the critical habitat? If it's an important criteria,
17 why is it being structured now that it's more or less an
18 afterthought?

19 That leads to another question: What results
20 of an economic analysis could lead you to change your
21 designation of property or an area or a region as
22 critical habitat? I'm trained as a scientist not as a
23 lawyer, but one of the criteria of scientific analysis,
24 not legal analysis, is that scientific claims and
25 theories are falsifiable. I'd like to know how to

1 falsify some of these things.

2 Okay. Now, let me get to a final question:
3 When all the legal discussion about whether your
4 activity or designating this as prudent is done, I still
5 would like an answer to a common sense question which
6 may have no bearing on the legal issues or may. I hope
7 it does. I'm not sure it will.

8 I'd really like to know what evidence is
9 available to me, or could become available to me to
10 change the designation of my land as identified as a
11 critical habitat. I've tried to hire the finest
12 researchers in this state who are published experts on
13 critical habitat designation for the snake -- and I have
14 an existing contract with such a very skilled and
15 knowledgeable researcher. That researcher refused
16 point-blank to sign a contract that that researcher
17 would tell me whether my land was critical habitat for
18 the snake. That is not a scientific question this
19 researcher said.

20 I'd like to know what kind of questions is. I
21 said to this researcher, I assume that's because there's
22 legal questions involved, or there's economic questions
23 involved, and you're not a lawyer and you're not an
24 economist. Fine. But I'd like to know what are the
25 economic issues involved, or what are the legal issues

1 involved other than the scientific questions.

2 Lastly, I would like to know how small of a
3 patch of scrub is critical habitat? I mean, there's --
4 you take every one of those criteria, which have been
5 described by previous people as vague. I have a small
6 patch of scrub on my 800 acres there, does that mean my
7 whole thing is critical habitat? I mean, how small is
8 small -- too small? That applies to every single
9 descriptive criteria you've got in there. You can think
10 of the questions. I'd like to know. I hope you can
11 answer these questions so I can write an intelligent and
12 constructive reply to the written proposal you've made.
13 If I don't know the answer to these questions I won't
14 write as good of a reply as I could otherwise.

15 I have a political agenda, but it's something
16 different from I think the ones you've heard previously.
17 I think the Environmental Species Act needs to be
18 reformed, and I'm interested in making it work better
19 than it works now, and there's legislation pending
20 before the Congress, and I'd like to learn from very
21 clear and specific evidence when it's working and when
22 it's not, and I hope you would share that goal, too.
23 Thank you.

24 HEARING OFFICER BIBB: Thank you, Mr. Alker.
25 At this point our reporter here needs a break. We're

1 going to take a five-minute recess. We will reconvene
2 at 2:05.

3 (Whereupon, a break was taken from 2:03 p.m to
4 2:09 p.m.)

5 HEARING OFFICER BIBB: We're back on the
6 record now. I would like to give everybody an
7 opportunity to speak, we're going to limit the
8 dissertation to five minutes, please. The first person
9 we're going to call is George Schneider.

10 Mr. Schneider, will you come to the
11 microphone, state and spell your name for the record,
12 tell us who you represent, and then begin your speech.

13 GEORGE SCHNEIDER: My name is George
14 Schneider, S-c-h-n-e-i-d-e-r. George, as in George
15 Washington. As a representative of a group of home and
16 property owners in Alameda County, I'm presenting this
17 letter to you for your future records and reference.

18 We believe our civil rights as property owners
19 are violated due to this government procedure and
20 attempt to restrict our property usage and reduce our
21 property values. It is our intent to stand up for civil
22 and property rights, and be treated fairly as any other
23 property owner. Please give me a written notice of any
24 future meetings you may have. Thank you.

25 HEARING OFFICER BIBB: Thank you,

1 Mr. Schneider. This will be put into the record.

2 Mr. Campos?

3 (No response.)

4 Next two speakers will be Jack Wessman and
5 Morgan King, if you could come forward. Mr. Wessman
6 will be the first speaker. State your name, spell it
7 for the record, indicate any connections you have with
8 anyone, and also begin your statement.

9 JACK WESSMAN: My name is Jack Wessman,
10 W-e-s-s-m-a-n. I live in this area that you guys have
11 designated, and I'd like to know if you guys really know
12 anything about the whipsnake. Lyme disease is a threat
13 on Mt. Diablo and when the tick that spreads Lyme
14 disease feeds on lizards, then the Lyme disease is
15 irradiated from its system, and that tick can bite you,
16 and you won't get Lyme disease. Well, that's nice when
17 the Alameda whipsnake's favorite food is this little
18 fence lizard.

19 I do like the snakes. They are beautiful and
20 they can climb trees -- like they can get to the top of
21 a tall oak tree in two seconds. It's just an amazing
22 thing to see, but I just hope that you won't diminish my
23 property value that my family and I have struggled
24 through the years to fight these environmentalists who
25 want everything and don't want to pay for it.

1 I don't want to sell my land. I want to keep
2 it. I want to be able to say my land is worth
3 10 million, or 5 million, or 1 million, whatever, and
4 not say if they don't take it from me. Please, I ask
5 you again, don't depreciate my land. Thank you.

6 HEARING OFFICER BIBB: Mr. Wessman, thanks
7 very much.

8 The next two speakers will be Mr. Morgan or
9 Ms. Morgan King.

10 Oh, okay. Morgan King had to leave. Thank
11 you.

12 The next speaker then will be Sarah Mora.
13 Ms. Mora, please come forward. State your name and
14 spell it for the record, indicate who you represent, and
15 begin your comments.

16 SARAH MORA: Good afternoon. My name is Sarah
17 Mora, it's S-a-r-a-h, M-o-r-a. I represent the Contra
18 Costa County Farm Bureau. We have some serious
19 questions about whether analysis has been done on what
20 the impact will be on the affected landowners,
21 especially private landowners. Many of our farmers and
22 ranchers are concerned that this designation will reduce
23 the viability of their agricultural operations, thus
24 forcing them to sell out possibly to development and
25 then the loss of critical habitat for other species will

1 also be lost.

2 It is critical that the economic impacts to
3 farmers and ranchers be considered carefully, and
4 receive the same attention as other factors. On areas
5 that are designated as public lands, many of these lands
6 are also used for agricultural uses, and these
7 agricultural uses should be considered also especially
8 for their economic impacts.

9 We feel that this is important if we're going
10 to have a serious discussion about how this will impact
11 property owners and will it in fact decrease or increase
12 critical habitat for other species. Thank you.

13 HEARING OFFICER BIBB: Ms. Mora, thank you
14 very much.

15 Our next speaker is Marcus O'Connell. Marcus
16 O'Connell?

17 (No response.)

18 Our next speaker then will be Ron Rives.
19 Mr. Rives, if you could come forward, state your name
20 and spell it for the record, indicate who you represent,
21 and begin your comments, please. Thank you.

22 RON RIVES: Thank you. My name is Ron Rives.
23 Last name is spelled R-i, v as in Victor, e-s. I
24 represent West Coast Home Builders. We build homes for
25 human beings. Latest statistics show that the average

1 cost of a home in Contra Costa County is \$240,000. The
2 average income necessary to buy the average home in
3 Contra Costa County is \$112,000 per year, assuming you
4 have 20 percent down payment in cash.

5 The proposal before us encompasses 406,708
6 acres. Some of this land cannot be developed already.
7 Some of this land can be developed and will be
8 effectively taken out of the stock of developmental land
9 by this proposal. It is misleading and disingenuous to
10 state that a designation of critical habitat will only
11 affect federal action.

12 It's hard to conceive of any development that
13 does not require some form of federal funding or federal
14 permit or federal license. For example, a federal
15 permit for inclusion is necessary to use water supplied
16 by the federal government to the Contra Costa Water
17 District. We don't build very many homes without water.

18 This proposal will affect the stock of land
19 available to be developed. The question has to be
20 asked: Where are the people who don't make \$112,000 a
21 year supposed to live? Where are teachers supposed to
22 live? Where are police officers supposed to live?
23 Where are our children supposed to live? Where are
24 families supposed to live?

25 Make no mistake this proposal will have

1 adverse economic impacts on Contra Costa County. It
2 will drive up the cost of homes, and it will displace
3 development further from jobs, and when you displace
4 development further from jobs, this creates more
5 traffic, more noise, and more pollution.

6 As you increase the critical habitat for
7 snakes you decrease the land available for habitat for
8 human beings and for families. You displace growth
9 further out. People in this county are much more
10 concerned about traffic than they are about snakes.
11 Thank you.

12 HEARING OFFICER BIBB: Mr. Rives, thanks very
13 much.

14 Our next speaker is Sherman Lewis. Mr. Lewis,
15 if you could come forward, state your name and spell it
16 for the record, indicate who you represent, and begin
17 your comments.

18 SHERMAN LEWIS: My name is Sherman Lewis,
19 S-h-e-r-m-a-n, L-e-w-i-s. I represent the Hayward Area
20 Planning Association. I support the designation of
21 critical habitat. I see some additions that help
22 connect some of the units, like 6 and 7, and I think
23 it's important to try to find ways for the snake to move
24 among these units. Units 2 and 3 are adjacent, but not
25 easily connected because of Interstate 580.

1 I hope you will look at the use of existing
2 bridges and underpasses for snake movement, and also if
3 there are future construction that this also provides a
4 means for snake movement between Units 2 and 3. One of
5 the things that we're struggling with here is human use
6 versus the protection of the endangered species.
7 Recreationists, builders, others, are concerned that
8 protection of the whipsnake will have an adverse effect
9 on their interests. Environmentalists are concerned
10 with trying to protect the snake. In this conflict, one
11 of the more difficult issues revolves around burden of
12 proof. It is up to --

13 HEARING OFFICER BIBB: Sorry about that.
14 Continue.

15 SHERMAN LEWIS: Is it up to environmentalists
16 to prove that the habitat is needed for the snake, or is
17 it up to people who want to use the land to prove that
18 it won't hurt the snake? We are increasing our amount
19 of scientific knowledge, but I feel that there are
20 issues relating to the shy distance that the snake has
21 that need a better understanding, or at least I
22 certainly need a better understanding of what kind of
23 distance do we need between human use and the snake
24 living in an undisrupted way. How far apart do these
25 things need to be? How frequent can human visual

1 intrusion be before it becomes disruptive?

2 I think that the snake has been known to
3 freeze, it's been known to flee, but I think we need to
4 know more about how much it freezes, how much it flees
5 in relation to the disruption of its ordinary daily
6 life.

7 So I would like to support trails and also
8 support species, and we need research to try to
9 understand how best to balance these competing needs.
10 My feeling is it's difficult for people to care about
11 this snake, and my remarks on this subject are going to
12 go a little broader than just critical habitat, but most
13 people have never heard of this creature. I have never
14 seen any videotape of this snake. I've only seen one
15 color photograph of this snake.

16 My feeling is -- well, one of the most
17 important things we could do would be to develop some
18 good videotape for education about where it lives, what
19 it needs, how it procreates, how it responds to
20 predators so that people would have more knowledge. We
21 walk into an undeveloped area. We enjoy the scenery,
22 but without some knowledge of the creatures that are
23 there, we can inadvertently have an adverse impact on
24 what we've come to enjoy. There are potential and
25 sometimes real conflicts between recreational use and

1 the functioning of the species in a wild situation.

2 I'm particularly concerned about the Blue Rock
3 project in the Bailey Ranch. The Bailey Ranch is in
4 many ways a problem that has been solved. The developer
5 has been able to build more than a hundred houses. He
6 has dedicated a large remainder parcel to the East Bay
7 Park District. He is protecting area for whipsnake
8 habitat. He is engaged in an interesting rock --
9 artificial rock outcrop to try to create new snake
10 habitat.

11 Next door to this very same property is the
12 Bailey Ranch, which has permission to build 750 houses,
13 and those can be built on a prudent area that does not
14 conflict with the snake. The difficulty on Blue Rock is
15 a golf course that does intrude into snake habitat, and
16 many of us in the environmental community feel that
17 these houses are bad enough, it would be better to try
18 to protect the whole area in open space, but this golf
19 course is a totally unacceptable use compared to the
20 protection of an endangered species.

21 HEARING OFFICER BIBB: Mr. Lewis, if you could
22 summarize your comments, please.

23 SHERMAN LEWIS: Now, as far as economic
24 analysis is concerned, I think it's important to have a
25 good market economist review your work, because many

1 times an activity that does not take place in one area
2 can take place in another. Particularly, we're
3 advocates of Smart Growth, which find ways within
4 urbanized areas to accommodate the growth that's needed
5 in this area. So I urge you to not only designate this
6 habitat, but do the additional research we need to
7 reconcile conflicts between the snakes and humans.

8 HEARING OFFICER BIBB: Thank you, Mr. Lewis.

9 Our next speaker will be Dennis Carrington.
10 Mr. Carrington, if you could come forward, state your
11 name, spell it for the record, indicate who you
12 represent and begin your comments.

13 DENNIS CARRINGTON: My name is Dennis
14 Carrington, D-e-n-n-i-s, C-a-r-r-i-n-g-t-o-n, City of
15 Dublin. The designation of the Schaefer Ranch and open
16 space areas within the city of Dublin as critical
17 habitat for the Alameda whipsnake is not appropriate for
18 several reasons: The primary constituent elements
19 required by the snake are not present. These include
20 scrub communities, mixed chaparral, chamise-redshank
21 chaparral, coastal scrub, and annual grassland and oak
22 woodlands that lie adjacent to scrub habitats.

23 In addition to grasslands and various oak
24 woodlands that are linked to scrub habitats by
25 substantial rock outcrops and riparian corridors can be

1 considered to be primary constituent elements. LSA
2 associates has studies Schaefer Ranch extensively and
3 has determined that no scrub habitat exists on the site.
4 Grasslands exist on the site but not in conjunction with
5 any scrub habitat or rock outcrops linking them to scrub
6 habitat. The open space areas in the urbanized portions
7 of the city are grasslands and are far from any scrub
8 habitat.

9 Annual grassland is a primary habitat type on
10 Schaefer Ranch, and in the open space areas surrounded
11 by urbanized uses in the city of Dublin, and is likely
12 to remain that way in the future. The proposed critical
13 habitat is not a corridor linking to actual habitat for
14 the Alameda Whipsnake to other nearby actual habitat.

15 The areas in Dublin that are proposed for
16 designation as critical habitat are at the extreme
17 southeast extent of the Oakland-Las Trampas Unit, and do
18 not provide linkages to any other Alameda whipsnake
19 habitat areas. No Alameda whipsnakes exist on Schaefer
20 Ranch. The LSA associates has performed several
21 protocol trapping studies for the whipsnake on Schaefer
22 Ranch, using procedures established by the Service. No
23 whipsnakes were found on the site. If no whipsnakes are
24 found on Schaefer Ranch, which is much closer to
25 wildlife areas, it is less likely that they would be

1 found in the open space areas in suburban neighborhoods
2 in the city of Dublin.

3 The economic impacts of the designation of the
4 city as critical habitat exceed 100 million dollars. It
5 is estimated that Schaefer Ranch has a value in excess
6 of 300 million dollars. There are 466 homes and a
7 commercial area that would be eliminated if this project
8 were not to go forward. The value to the city far
9 exceeds the amount due -- that amount due to the
10 economic multiplier of fact.

11 The proposed federal rule establishing the
12 critical habitat for the Alameda whipsnake states that
13 it is assumed that all of the designated habitat is
14 occupied by the Alameda whipsnake. Any project in this
15 area would be subject to mitigation measures and/or
16 designed constraints that would eliminate the economic
17 value of the project.

18 The loss of this project due to its
19 designation as critical habitat would have significant
20 negative regional and local economic effects. The loss
21 of the Schaefer Ranch project would result in the loss
22 of a significant portion of the regional riding and
23 hiking trail running through the hills of the East Bay,
24 and of the hiking and riding and staging area.

25 Critical habitat proposals must be based on

1 the best scientific and commercial data available after
2 taking into consideration the economic impact and any
3 other relevant impact specifying any particular area as
4 critical habitat.

5 The city of Dublin and LSA associates can
6 provide excellent scientific and commercial data on the
7 areas of the city that you propose to designate as
8 critical habitat for the Alameda whipsnake. This data
9 will make it abundantly clear that this area should not
10 be so designated. Thank you.

11 HEARING OFFICER BIBBS: Mr. Carrington, thank
12 you very much.

13 Our next speaker is Daryl Hoon. Mr. Hoon, if
14 you could come forward, state your name, and spell it
15 for the record, tell us who you represent, begin your
16 comments, and limit them to five minutes. Thank you.

17 DARYL HOON: Hi. My name is Daryl Hoon,
18 D-a-r-y-l, H-o-o-n. I don't represent anybody but
19 myself. I am not a self-serving landowner or developer.
20 The Alameda whipsnake is not in my food chain either,
21 but I do care that it lives and survives. So as a
22 concerned resident of this valley, I'm glad you're here.
23 I'm glad the U.S. Fish & Wildlife is here, and I'm glad
24 that the Center for Biological Diversity is here.
25 Throughout this process, I hope you do not compromise

1 the survival of the Alameda whipsnake or its habitat.

2 You are its last defense. Thank you.

3 HEARING OFFICER BIBB: Mr. Hoon, thank you.

4 Our next speaker is Frank Pereira.

5 Mr. Pereira, if you could come forward to the mike,
6 please state your name, spell it for the record,
7 indicate who you represent, and begin your comments.

8 FRANK PEREIRA: My name is Frank Pereira,
9 spelled P-e-r-e-i-r-a. I chair Citizens Land Alliance,
10 an organization for property rights in Contra Costa
11 County. I'm also in real estate. I'm also in ranching.
12 So I wear a few hats.

13 I heard Tom Brumleve and Henry Alker speak,
14 and they asked a lot of questions, and the questions
15 have to be answered, and I'm sure they will be. I also
16 work with people that are sitting here that are trying
17 to use some property -- there's mitigation, working with
18 them on that, and I'm trying to see if there's a way
19 out.

20 In working with the federal government, we're
21 a long ways away from it. We like local government, and
22 that really stays with us really strong. So we've got a
23 lot of problems, we'd like a few answers, and you heard
24 a lot of people speak. We're not here as self-serving,
25 as someone just mentioned. This land has been

1 purchased, they love their property, and some of it is
2 pension money. If somebody wants it, they always say
3 bring a checkbook. Right now, our Congressman George
4 Miller, and also Don Young of Alaska, they're trying to
5 get 3 billion a year for 15 year to purchase some of
6 this property.

7 That's aiming in possibly the right direction,
8 but there are many questions that have to be answered.
9 They have been asked here, you heard those two men, I
10 know them both personally, and I think we can all work
11 together and come forward with something. Thank you.

12 HEARING OFFICER BIBB: Thank you, Mr. Pereira.

13 Our next speaker will be Maiorana, Janet
14 Maiorana. Ms. Maiorana, if you can come forward, spell
15 your name for us, state it, indicate any associations
16 you might have, and begin your comments.

17 JANET MAIORANA: Janet Maiorana, J-a-n-e-t.
18 Last name is spelled M-a-i-o-r-a-n-a. I'm concerned
19 about 1,000 acres in Gateway Valley. The project that
20 is planned is for 1 million dollar plus homes. Now,
21 this is certainly not low cost housing that people talk
22 about, you know, the need that we have for reasonable
23 housing.

24 I've gone to a lot of the meetings, and it's
25 my opinion that this development will be a disaster for

1 the environment, and this is our last chance to preserve
2 the environment. So we're very appreciative of all that
3 you have done and are certainly relying on you to help
4 protect the environment. Thank you.

5 HEARING OFFICER BIBB: Ms. Maiorana, I
6 appreciate your comments.

7 The next speaker will be -- these are two
8 people I called previously: Marcus O'Connell, if you
9 could come forward, state your name, spell it for the
10 record, indicate anybody you represent, and begin your
11 comments.

12 MARCUS O'CONNELL: My name is Marcus
13 O'Connell. The last name is spelled capital O,
14 apostrophe, capital C, o-n-n-e-l-l. I'll keep my
15 comments very brief. I do support the designation of
16 the critical habitat area. I would like to say ditto to
17 the comments of several previous speakers: Mr. Vaughn,
18 Mr. Jameson, Mr. Lewis, and Mr. Hoon.

19 I have -- first I'd like to begin with a
20 question: I would like to know when the recovery plan
21 will be completed, because I think the primary concern
22 is the recovery of this species. Number 2, I'm
23 concerned about the isolation of Unit No. 4. I believe
24 there should be some kind of land link to the other
25 areas. Number 3, I think that there may be some reasons

1 to extend area 4 to the east.

2 I think that if one were to review the
3 environmental documents that have been prepared for
4 properties in that area, you would find some
5 justification for that. Finally, relating to habitat
6 conservation plans, in particular, page 12163 of the
7 Federal Register of March 8th, 2000, I strongly support
8 option 1. Thank you very much.

9 HEARING OFFICER BIBB: Mr. O'Connell, thank
10 you.

11 Our next speaker is Mr. Paul Campos.
12 Mr. Campos, are you here?

13 (No response.)

14 It doesn't appear that Mr. Campos is here.
15 We've called all of the speakers who have registered
16 thus far. If you want to present comments at this
17 hearing, please register at the table outside this room.
18 At this point since there is no one else registered, we
19 will take a recess until someone does come forward to
20 speak. We're now off the record. Thank you.

21 (Whereupon, a break was taken from 2:33 p.m to
22 3:03 p.m.)

23 HEARING OFFICER BIBB: We're back on the
24 record. It is now 3:00 o'clock. On behalf of the U.S.
25 Fish & Wildlife Service, we appreciate the time and

1 effort you took this afternoon to present your comments.
2 They have been very informative and will be fully
3 considered in coming to a final decision. This hearing
4 is now adjourned until 6:00 p.m. today. Thank you.

5 (Whereupon, the hearing was
6 adjourned at 3:03 p.m.)

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